

Review of Delayed Sentences in Designated Cases

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21.1 Delayed Imposition of Adult Sentence

If the court determines that the juvenile should be sentenced as an adult, the court may, in its discretion, enter an order of disposition delaying imposition of sentence and placing the juvenile on probation on such terms and conditions as it considers appropriate, including any disposition available under MCL 712A.18; MSA 27.3178(598.18). MCR 5.955(D).*

A delayed sentence may be imposed in accordance with MCR 5.956. *Id.* If the court delays imposition of sentence, MCL 712A.18i; MSA 27.3178(598.18i), applies. The maximum period of delay shall be no longer than the period during which the Family Division has jurisdiction over the juvenile under the Juvenile Code. MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n).*

A delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile at any time during the delay. MCL 712A.18i(1); MSA 27.3178(598.18i)(1).*

*See Forms JC 73 and 74.

*See Chapter 15 for a discussion of the duration of Family Division jurisdiction over juveniles.

*See, however, Notes to Sections 21.5 and 21.6, below.

21.2 Required Annual Reviews of Delayed Sentences

If the court has delayed imposition of sentence, the court must conduct an annual review of the probation to determine whether the juvenile has been

rehabilitated and whether the juvenile presents a serious risk to public safety, including but not limited to the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting the review, the court must examine any annual report prepared under MCL 803.223; MSA 25.399(223), of the Juvenile Facilities Act, and any report prepared upon the court's order by the officer or agency supervising probation. The court may order changes in the juvenile's probation based on the review including but not limited to imposition of sentence. MCL 712A.18i(2); MSA 27.3178(598.18i)(2), and MCR 5.956(A)(1)(a)(i).

Note that a hearing is not required when the court conducts an annual review.

21.3 Periodic Reviews at Request of Juvenile Facilities

If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction, any time before the juvenile becomes 21 years of age. MCL 712A.18i(4); MSA 27.3178(598.18i)(4), and MCR 5.956(A)(1)(a)(ii).

The criteria to determine whether to continue jurisdiction at mandatory review hearings also apply to hearings initiated by the institution or agency.*

*See Section 21.5, below.

21.4 Mandatory Reviews at Age 19

If the court entered an order of disposition delaying imposition of sentence, the court must conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. MCL 712A.18i(3); MSA 27.3178(598.18i)(3), and MCR 5.956(A)(1).

The court must conduct this review hearing within 42 days of the juvenile's 19th birthday, unless adjourned for good cause. MCR 5.956(A)(1)(a)(iii).

21.5 Criteria to Determine Whether to Continue Jurisdiction at Mandatory Review Hearings

MCR 5.956(A)(4) states that before the court may continue jurisdiction over the juvenile or impose sentence, the prosecuting attorney must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile represents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply. If the court determines that the juvenile has not been

rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may impose sentence. In making this determination, the court shall consider the following:

- (i) the extent and nature of the juvenile's participation in education, counseling, or work programs;
- (ii) the juvenile's willingness to accept responsibility for prior behavior;
- (iii) the juvenile's behavior in his or her current placement;
- (iv) the prior record and character of the juvenile and his or her physical and mental maturity;
- (v) the juvenile's potential for violent conduct as demonstrated by prior behavior;
- (vi) the recommendations of any institution, facility, or agency charged with the juvenile's care for the juvenile's release or continued custody; and
- (vii) any other information the prosecuting attorney or juvenile may submit.

MCR 5.956(A)(4)(a)(i)–(vii) and MCL 712A.18i(3)(a)–(g); MSA 27.3178(598.18i)(3)(a)–(g).

NOTE: MCL 712A.18h; MSA 27.3178(598.18h), states that juveniles “sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections.” This limitation does not apply to juveniles convicted of specified juvenile violations. *Id.* * Because MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), deals with the initial decision to impose or delay imposition of sentence, it is unclear whether juveniles may be committed to the Department of Corrections during the delay in imposition of sentence.

When imposition of an adult sentence has been delayed, the court may impose sentence at any time during the delay under MCL 712A.18i; MSA 27.3178(598.18i), and section (11) of that statute contemplates a sentence of imprisonment. Thus, it appears that commitment to the Department of Corrections is a sentencing option in court-designated cases during the period that the court has jurisdiction over the juvenile. See also Section 21.12, Note 1, for a discussion of limitations on sentencing juveniles following probation violations requiring probation revocation, where the juveniles were originally convicted of non-specified juvenile violations.

*See Section 19.6 for a list of offenses for which juveniles may be committed to the Department of Corrections and their maximum penalties. See also MCL 791.220g; MSA 28.2290(7), which provides for youth correctional facilities within the Department of Corrections.

21.6 Final Reviews at End of Probation Period

The court must conduct a final review of the juvenile's probation not less than 91 days before the end of the probation period. MCR

5.956(A)(1)(a)(iv). If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose that sentence. MCL 712A.18i(7); MSA 27.3178(598.18i)(7), and MCR 5.956(A)(4).

*See Section 19.6 for a list of offenses for which juveniles may be committed to the Department of Corrections and their maximum penalties. See also MCL 791.220g; MSA 28.2290(7), which provides for youth correctional facilities within the Department of Corrections.

NOTE: MCL 712A.18h; MSA 27.3178(598.18h), states that juveniles “sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections.” This limitation does not apply to juveniles convicted of specified juvenile violations. *Id.* * Because MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), deals with the initial decision to impose or delay imposition of sentence, it is unclear whether juveniles may be committed to the Department of Corrections during the delay in imposition of sentence.

When imposition of an adult sentence has been delayed, the court may impose sentence at any time during the delay under MCL 712A.18i; MSA 27.3178(598.18i), and section (11) of that statute contemplates a sentence of imprisonment. Thus, it appears that commitment to the Department of Corrections is a sentencing option in court-designated cases during the period that the court has jurisdiction over the juvenile. See also Section 21.12, Note 1, for a discussion of limitations on sentencing juveniles following probation violations requiring probation revocation, where the juveniles were originally convicted of non-specified juvenile violations.

21.7 Criteria to Determine Whether to Impose Adult Sentence at Final Review Hearings

MCR 5.956(A)(4)(b) states that before the court may impose sentence at the final review hearing, the court must determine that the best interests of the public would be served by imposition of a sentence provided by law for an adult offender. In making this determination, the court must consider all of the following criteria:

- F the extent and nature of the juvenile’s participation in education, counseling, or work programs;
- F the juvenile’s willingness to accept responsibility for prior behavior;
- F the juvenile’s behavior in his or her current placement;
- F the prior record and character of the juvenile and his or her physical and mental maturity;
- F the juvenile’s potential for violent conduct as demonstrated by prior behavior;
- F the recommendations of any institution, facility, or agency charged with the juvenile’s care for the juvenile’s release or continued custody;
- F other information the prosecuting attorney or juvenile may submit;
- F the effect of treatment on the juvenile’s rehabilitation;
- F whether the juvenile is likely to be dangerous to the public if released; and

F the best interests of the public welfare and the protection of public security.

MCR 5.956(A)(4)(b)(i)–(iii) and MCL 712A.18i(7)(a)–(c); MSA 27.3178(598.18i)(7)(a)–(c).

21.8 Notice Requirements for Review Hearings

Not less than 14 days before a review hearing is to be conducted, the prosecutor, the agency or superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile (if appropriate) or impose sentence and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. MCL 712A.18i(5); MSA 27.3178(598.18i)(5), MCL 712A.18i(8); MSA 27.3178(598.18i)(8), and MCR 5.956(A)(1)(b).*

*See Form JC 67.

21.9 Appointment of Counsel to Represent Juvenile at Review Hearings

If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply. MCL 712A.18i(5); MSA 27.3178(598.18i)(5), MCL 712A.18i(8); MSA 27.3178(598.18i)(8), and MCR 5.956(A)(2).

21.10 Consideration of Reports at Review Hearings

A commitment report prepared pursuant to MCL 803.225; MSA 25.399(225), of the Juvenile Facilities Act, and any report prepared upon the court's order by the officer or agency supervising probation may be considered by the court at a review hearing under this section. MCL 712A.18i(6); MSA 27.3178(598.18i)(6), and MCR 5.956(A)(3).

21.11 Required Credit for Time Served on Probation Prior to Imposition of Sentence*

MCL 712A.18i(11); MSA 27.3178(598.18i)(11), and MCR 5.956(A)(5) state that if a sentence of imprisonment is imposed, the juvenile shall receive credit "for the period of time served on probation."

*See also Section 20.26 for a discussion of required credit for time served prior to sentencing.

NOTE: The juvenile is entitled to receive credit for the entire time served on probation, not just the time during which the juvenile was in custody. In *People v Cokley*, unpublished opinion per curiam of the Court of Appeals, decided January 9, 1995 (Docket No. 156947) (Marilyn Kelly, PJ, and Shepherd, and Borrello, JJ), the Court interpreted MCL 771.7; MSA 28.1137, which governs sentencing of automatically waived juveniles following probation revocation. The statute in *Cokely* required the sentencing judge to give credit against the sentence “for the period of time that the juvenile served on probation.” The Court of Appeals held that the language required credit for the entire period that the juvenile was on probation, including the time he was living at home with his grandparents.

21.12 Mandatory Probation Revocation for Commission of a Felony

If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being:

- F convicted of a felony or a misdemeanor punishable by imprisonment for more than one year, or
- F adjudicated as responsible for an offense that if committed by an adult would be a felony or misdemeanor punishable by imprisonment for more than one year,

the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation. MCL 712A.18i(9); MSA 27.3178(598.18i)(9), and MCR 5.956(B)(1).

NOTE 1: Commitment to the Department of Corrections does not appear to be an option following revocation of probation for the commission of a felony or high-court misdemeanor, where the juvenile was originally convicted of a non-specified juvenile violation. MCL 712A.18i(9); MSA 27.3178(598.18i)(9), and MCR 5.956(B)(1), allow imposition of any penalty that could have been imposed for the original conviction, and juveniles can be committed to the Department of Corrections following conviction in a designated case only for specified juvenile violations. MCL 712A.18h; MSA 27.3178(598.18h). But see Section 19.1, Note.

NOTE 2: MCL 750.186a(1); MSA 28.383a(1), now makes it a felony for an individual who is placed in a juvenile facility to escape or attempt to escape from that juvenile facility or from the custody of an employee of that facility. “Escape” means to leave without lawful authority or to fail to return to custody when required. MCL 750.186a(2)(a); MSA 28.383a(2)(a). A juvenile facility includes an institution operated as an agency of the county or court, and a state institution to which an offender has been committed for a misdemeanor or felony offense. MCL 750.186a(2)(b); MSA 28.383a(2)(b).

NOTE 3: Consecutive sentencing is required where a person commits any offense while incarcerated in a penal or reformatory institution, or after escaping from such an institution. MCL 768.7a; MSA 28.1030(1). Consecutive sentences must also be imposed where a person commits a major controlled substance offense while another felony charge is pending, MCL 768.7b(2)(b); MSA 28.1030(2)(2)(b), and consecutive sentences may be imposed where a person commits a felony while another felony charge is pending. MCL 768.7b(2)(a); MSA 28.1030(2)(2)(a). It is unclear whether a charge is pending where the court has delayed imposition of sentence and placed the juvenile on probation in designated cases. See *People v Leal*, 71 Mich App 319, 321 (1976), and *People v Malone*, 177 Mich App 393, 401–02 (1989) (statute does not apply to an offense committed while the defendant is on probation, as the prior offense is no longer pending); *People v Hacker*, 127 Mich App 796 (1983) (case is still pending if defendant is on delayed-sentence status when the new offense is committed), and *People v Dukes*, 189 Mich App 262, 266 – 67 (1991) (case is pending until a defendant is sentenced).*

*See Section 20.8 for a more detailed discussion of mandatory and discretionary consecutive sentencing provisions.

21.13 Other Probation Violations

If a juvenile placed on probation under an order delaying imposition of sentence is found by the court to have violated probation other than as stated above in MCR 5.956(B)(1), the court may impose sentence or may order any of the following for the juvenile:

- (a) a change of placement;
- (b) community service;
- (c) substance abuse counseling;
- (d) mental health counseling;
- (e) participation in a vocational-technical education program;
- (f) incarceration in a county jail for not more than 30 days if:

F the present county jail facility would meet all requirements under federal law and regulations for housing juveniles, and

F the court has consulted with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. If the juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners;

(g) other participation or performance as the court considers necessary.

MCL 712A.18i(10)(a)–(g); MSA 27.3178(598.18i)(10)(a)–(g), and MCR 5.956(B)(2)(a)–(g).

21.14 Required Procedures at Probation Revocation Hearings

Probation violation hearings must be conducted pursuant to MCR 5.944(C). MCR 5.956(B)(3).*

*See Sections 15.6(C) and 15.7 (no hearing required unless court orders more restrictive placement or treatment).

21.15 Required Credit for Time Served on Probation Following Revocation of Probation*

MCL 712A.18i(11); MSA 27.3178(598.18i)(11), and MCR 5.956(B)(4) state that if a sentence of imprisonment is imposed, the juvenile shall receive credit for the period of time served on probation.

*See also Section 20.26 for a discussion of required credit for time served prior to sentencing.

NOTE: The juvenile is entitled to receive credit for the entire time served on probation, not just the time during which the juvenile was in custody. In *People v Cokley*, unpublished opinion per curiam of the Court of Appeals, decided January 9, 1995 (Docket No. 156947) (Marilyn Kelly, PJ, and Shepherd, and Borrello, JJ), the Court interpreted MCL 771.7; MSA 28.1137, which governs sentencing of automatically waived juveniles following probation revocation. The statute in *Cokely* required the sentencing judge to give credit against the sentence “for the period of time that the juvenile served on probation.” The Court of Appeals held that the language required credit for the entire period that the juvenile was on probation, including the time he was living at home with his grandparents.

